No. 15349

In the United States Court of Appeals for the Ninth Circuit

JEFFERSON STANDARD LIFE INSURANCE COMPANY, A CORPORATION, APPELLANT

v.

UNITED STATES OF AMERICA, H. L. BYRAM, COUNTY TAX COLLECTOR OF LOS ANGELES COUNTY, AND GEORGE T. GOGGIN, TRUSTEE OF STOCKHOLDERS PUBLISHING COMPANY, INC., A CORPORATION, BANKRUPT, APPELLEES

ON APPEAL FROM THE ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

BRIEF FOR THE APPELLEES

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BRIEF FOR THE APPELLEES

OPINION BELOW

The order of the District Court affirming the order of the referee in bankruptcy (R. 39–41) is not officially reported.

JURISDICTION

This appeal involves the relative superiority of a secured claim of Jefferson Standard Life Insurance Company, the appellant herein, and of tax liens of the United States and those of the County of Los Angeles, upon property of Stockholders Publishing Company, the bankrupt herein. The District Court had juris-

diction under Section 2 of the Bankruptcy Act to cause the estate of the bankrupt to be collected, reduced to money and distributed, and to determine controversies in relation thereto. Pursuant to Section 39 of the Bankruptcy Act, the referee in bankruptcy issued his findings of fact, conclusions of law and order for payment on February 20, 1956. (R. 23–32.) Under Section 39 (c) of the Bankruptcy Act, Jefferson Standard Life Insurance Company filed with the referee, on March 15, 1956, a petition for review of such order by the District Court. (R. 32–35.) An order of the District Court was entered on July 20, 1956, affirming the order of the referee. (R. 37–38.) A formal order affirming the order of the referee was entered by the District Court on August 14, 1956. (R. 39–41.) Under Section 25 of the Bankruptcy Act, Jefferson Standard Life Insurance Company filed its notice of appeal on September 6, 1956. (R. 41–42.) Jurisdiction of this Court is invoked under Section 24 of the Bankruptcy Act and Section 1291, 28 U. S. C.

QUESTIONS PRESENTED

1. Whether the District Court was correct in ruling that the appellant-mortgagee was entitled to first priority in the proceeds from the assets subject to the mortgage, and that the United States was first in priority to any excess, less costs and administration expenses.

2. Whether the referee should have abandoned the properties which were subject to both the mortgage and the federal tax liens.

3. Whether the District Court erred in not allowing the mortgagee post-bankruptcy interest.

STATUTE INVOLVED

Internal Revenue Code of 1939:

SEC. 3670. PROPERTY SUBJECT TO LIEN.

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

(26 U. S. C. 1952 ed., Sec. 3670.)

SEC. 3671. PERIOD OF LIEN.

Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time.

(26 U. S. C. 1952 ed., Sec. 3671.)

SEC. 3672 [As amended by Section 401, Revenue Act of 1939, c. 247, 53 Stat. 862, and Section 505, Revenue Act of 1942, c. 619, 56 Stat. 798]. VALIDITY AGAINST MORTGAGEES, PLEDGEES, PURCHASERS, AND JUDGMENT CREDITORS.

(a) *Invalidity of Lien Without Notice.*— Such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment

creditor until notice thereof has been filed by the collector—

(1) *Under State or Territorial Laws.*—In the office in which the filing of such notice is authorized by the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law authorized the filing of such notice in an office within the State or Territory; or

(2) *With Clerk of District Court.*—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law authorized the filing of such notice in an office within the State or Territory; or

(3) *With Clerk of District Court of the United States for the District of Columbia.*—In the office of the clerk of the District Court of the United States for the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

* * * * *

(26 U. S. C. 1952 ed., Sec. 3672.)

STATEMENT

The relevant facts, as found by the referee (R. 24–27) and adopted by the District Court (R. 39–41), may be summarized as follows:

On December 1, 1945, Stockholders Publishing Company, Inc., executed a trust indenture, deed of trust, assignment, and chattel mortgage to secure an indebtedness of $1,000,000 to Jefferson Standard Life Insurance Company. This document was recorded on

December 1, 1945, in the official records of Los Angeles County, California. (R. 24.)

On December 31, 1954, Stockholders Publishing Company, Inc., filed a petition in bankruptcy. (R. 25.)

By order of April 27, 1955, the referee in bankruptcy authorized the trustee of the bankrupt to sell free and clear of liens the real and personal property of the bankrupt. This sale took place on April 27, 1955, and $382,500 was realized from the sale. The sale was confirmed by the referee on April 29, 1955. All liens upon the property sold were transferred to the proceeds of sale without impairment. Jefferson Standard Life Insurance Company cooperated with the trustee of the bankrupt estate and took no action to delay or hinder any sale of the assets of the bankrupt estate or the payment of principal and interest on its claim. (R. 24–25.)

As of December 31, 1954, the date of the petition in bankruptcy, the indebtedness of the bankrupt to Jefferson Standard Life Insurance Company, Inc., secured by the trust indenture, deed of trust, assignment, and chattel mortgage was $351,223.74, inclusive of interest, plus attorney's fees. (R. 25.)

On March 14, 1952, the Collector of Internal Revenue at Los Angeles received the assessment list of 1943, 1944, and 1945 corporate income and excess profits taxes which had been assessed against Stockholders Publishing Company, Inc., on March 11, 1952. The Collector issued notices and demands for the payment of these taxes on March 18, 1952, but the sum of

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$280,800.10, inclusive of interest, remained assessed, unpaid and outstanding as of December 31, 1954. Furthermore, on February 22, 1954, and May 13, 1954, withholding and federal insurance contribution taxes for the fourth quarter of 1953, and the first quarter of 1954, were assessed and paid with the exception of a 5% penalty added for failure to make payment within 10 days after notice and demand. The unpaid amount of these penalties existing on December 31, 1954, was $7,808.48. Notices of liens securing payment of all taxes owing to the United States by Stockholders Publishing Company, Inc., were filed in the office of the County Recorder of Los Angeles County, California, by the District Director of Internal Revenue, on December 20, 1954. (R. 25–26.)

Los Angeles County, California, on March 1, 1954, assessed real and personal property taxes for the year 1954–1955, against the property of the bankrupt for $15,384.10, which became liens upon the four parcels of real estate which were sold by the trustee free and clear of liens. The liens of the county were transferred to the proceeds of sale and remained unpaid. (R. 26.)

The District Court held that the order of priority of payment from the proceeds of sale was as follows (R. 28–29):

1. The sum of $351,223.74 due Jefferson Standard Life Insurance Company, and the further sum of $3,500 representing an attorney's fee to its counsel;

2. The costs of sale and administration;

3. The lien claim of the United States for income and excess profits taxes in the sum of $280,800.10, plus

the sum of $7,808.48 in nonpayment penalties upon withholding and federal insurance contribution taxes for the fourth quarter of 1953, and the first quarter of 1954;

4. The sum of $15,384.10 due to the Tax Collector for the County of Los Angeles in satisfaction of the 1954–1955 property tax levied upon the assets of the bankrupt.

The referee held, however, that $15,384.10 should be deducted from the $351,223.74 set aside for payment to Jefferson Standard Life Insurance Company on its lien, and that this $15,384.10 should be paid over to the Tax Collector for the County of Los Angeles in satisfaction of the latter's claim. The referee held that the payment of the $351,223.74, less the $15,384.10, would fully satisfy the claim of Jefferson Standard Life Insurance Company, unless additional amounts were recovered by the trustee in bankruptcy. Any additional amounts remaining after payment of the claim of the United States should be paid to Jefferson Standard Life Insurance Company in reimbursement of the $15,384.10 previously deducted. (R. 27, 29, 30.)

From the proceeds of sale held by the trustee in bankruptcy Jefferson Standard Life Insurance Company was paid on September 1, 1955, the sum of $335,839.64, consisting of $334,558.57, representing full payment of the principal of its claim remaining unpaid, plus $16,665.17, representing interest on its claim to December 31, 1954, the date of the petition in bankruptcy, less the tax claim of Los Angeles County in the amount of $15,384.10. (R. 26–27.)

The referee also held that none of the creditors of the bankrupt were entitled to interest on their claim after the filing of the petition in bankruptcy on December 31, 1954. (R. 30.)

On August 13, 1956, the District Court ordered that the order of the trustee, dated February 20, 1956, be affirmed and that the findings of fact and conclusions of law as made by the referee be adopted by the District Court. (R. 39–41.)

SUMMARY OF ARGUMENT

1. Under federal law appellant's mortgage lien ranks ahead of the federal tax liens. However, under the doctrine of "the first in time is the first in right" enunciated by the Supreme Court, the tax liens of the United States, having attached before the tax liens of the County of Los Angeles, rank before the latter's liens.

The United States is not interested in whether the county receives payment upon its liens prior to the mortgagee. That is a matter of local law. The federal tax lien is entitled under federal law to any funds in excess of the amounts necessary to pay the costs of administration and the mortgagee's claim.

2. A trustee in bankruptcy may abandon only property that is burdensome, or charged with liens in excess of the value, or otherwise unprofitable to the bankrupt estate. Even then, the question as to whether the trustee shall elect to take the burdensome property or to abandon it is solely a matter of discretion. Where, as here, the assets subject to the mortgagee's claim were sold for more than the principal of

the claim plus accrued interest thereon to the date of bankruptcy, the action of the District Court, in authorizing the trustee to take the property belonging to the bankrupt and to reduce the property to money by selling the assets free of liens and to transfer the lienholders' rights to the proceeds received from the sale, was not only justified but was required. The United States held a lien on the property for taxes; and it was entitled to priority of payment in any excess over the mortgagee's claim plus costs of sale and administration.

Appellant did not request that the properties be abandoned. It was present at the hearing on the trustee's petition for an order authorizing the sale of the assets, but did not oppose the sale or seek review by the District Court of the referee's orders authorizing the sale and confirming the sale. Consequently, these orders have become final, and appellant cannot later attack them collaterally on appeal for the first time.

3. The general rule in bankruptcy is well settled that interest on unsecured and secured claims runs only to the date of the petition in bankruptcy. Two recognized exceptions to this rule allow interest to run to the date of payment of the principal of the claim where the alleged bankrupt proves to be solvent or where the security subject to a claim produces income during the bankruptcy administration.

Some of the Courts of Appeals recognize a third exception to the general rule, that where the value of the security is more than sufficient to pay the principal of the secured claim, the excess should be applied

to post-petition interest on the secured obligation. This Court, however, in *Beecher* v. *Leavenworth State Bank,* 192 F. 2d 10, denied secured creditors post-petition interest except to the extent that interest was paid from the income of the securities pledged as collateral, or to the extent that the bankrupt estate was fully solvent. We submit that under the rule of this Court, as expressed in *Beecher,* appellant's claim for post-petition interest in the present case should be denied.

ARGUMENT

I. The District Court correctly held that the federal tax lien was entitled to priority over all liens other than the lien of the mortgagee

The District Court did not hold that the federal lien is ahead of appellant's mortgage lien. Instead, it holds to the contrary—that under federal law appellant's lien ranks ahead of the federal tax lien, which in turn, ranks ahead of the county's liens. Appellant makes no contention, as indeed it cannot, that the local tax liens were entitled to priority of payment over the federal tax lien.

The assessment list for the federal taxes was received by the Collector of Internal Revenue on March 14, 1952, and was recorded in the office of the County Recorder of Los Angeles on December 20, 1954. (R. 25–26.) The tax liens of Los Angeles County attached on March 1, 1954. (R. 26.)

Although both the tax liens of the United States and those of the county are to be recognized under Section 67 (c) of the Bankruptcy Act, c. 541, 30 Stat. 544, as amended (11 U. S. C. 1952 ed., Sec. 107),

nevertheless, under the doctrine of "the first in time is the first in right" enunciated by the Supreme Court in *United States* v. *New Britain,* 347 U. S. 81, 85, the tax liens of the United States, having attached before the tax liens of the county, rank before the latter's liens. See Section 3671 of the Internal Revenue Code of 1939, supra. The fact that the county's liens attached before notice was given of the tax liens of the United States is of no moment. They do not fall within any one of the categories set forth in Section 3672 of the Internal Revenue Code of 1939, *supra,* which requires filing of notice to be valid against a subsequent mortgagee, pledgee, purchaser or judgment creditor. As the Supreme Court holds in *New Britain, supra* (p. 88):

> There is nothing in the language of § 3672 to show that Congress intended antecedent federal tax liens to rank behind any but the specific categories of interests set out therein, and the legislative history lends support to this impression.

United States v. *Security Tr. & Sav. Bk.,* 340 U. S. 47; *United States* v. *Gilbert Associates,* 345 U. S. 361; *United States* v. *New Britain,* 347 U. S. 81; *United States* v. *Acri,* 348 U. S. 211; *United States* v. *Liverpool & London Ins. Co.,* 348 U. S. 215; *United States* v. *Scovil,* 348 U. S. 218; *United States* v. *Colotta,* 350 U. S. 808, reversing *per curiam,* 79 So. 2d 474 (Miss.); *United States* v. *White Bear Brewing Co.,* 350 U. S. 1010, granting the petition for certiorari and summarily reversing, 227 F. 2d 359 (C. A. 7th); *California*

State Dept. of Employ. v. *United States,* 210 F. 2d 242 (C. A. 9th).

The appellant's contentions (Br. 5–8, 13–15) concerning what it terms "circular priorities"[1] have been directly answered by the Supreme Court in *New Britain, supra,* wherein the Court held (pp. 87–88):

> The State finds the rule of "first in time, first in right" not applicable because of § 3672 of the Internal Revenue Code, which makes the lien of the United States invalid as to the prior recorded mortgages and the judgment in this case. It points out that the mortgagee could have paid the delinquent real-estate taxes and water rent, with the amount so paid becoming part of the mortgage debt covered by the mortgage lien, and suggests that the federal tax lien

[1] The term "circular priorities" as employed by appellant apparently is intended to include the situation where there are several adverse claimants, such as a mortgagee, the United States and a local government, and where the mortgagee is given a priority over the United States and the local government by federal law, and the local government is preferred over the mortgagee by local law. See *United States* v. *New Britain, supra; Spokane County* v. *United States,* 279 U. S. 80, 91.

The cases which have dealt with this situation have followed the same procedure which was adopted by the District Court in this case, i. e., that the United States is held not to be concerned with the order of priority of the other claimants under local law, and that the order of priority of the federal tax lien is determined solely by federal law, and only after the lien of the United States is satisfied may the priorities of the remaining lienors be classified under local law. See *Smith* v. *United States,* 113 F. Supp. 702 (Hawaii); *Hopkins* v. *Eureka Coal Co.* (C. C. Kanawha Co., W. Va.), decided February 25, 1944 (33 A. F. T. R. 1627); *Samms* v. *Chicago Title & Trust Co.,* 349 Ill. App. 413, 111 N. E. 2d 172; *Southern Ohio Savings Bank & Trust Co.* v. *Bolce,* 165 Ohio St. 201, 125 N. E. 2d 217; *Brown* v. *General Laundry Service, Inc.,* 19 Conn. Supp. 335, 113 A. 2d 601.

> would therefore be invalid as to such amount by virtue of § 3572. From this and a belief that Congress did not intend, by giving mortgages and judgments priority over federal tax liens, to supersede state laws making certain interests superior to mortgages and judgments, the Supreme Court of Errors concluded that by enacting § 3672 Congress "expressed the intention that federal liens should be subordinated to such mortgages and judgment liens as are described therein and, consequently, subordinated to such other incumbrances as have priority over those mortgages and judgment liens."
>
> We do not agree. The United States is not interested in whether the State receives its taxes and water rents prior to mortgagees and judgment creditors. That is a matter of state law. But as to any funds in excess of the amount necessary to pay the mortgage and judgment creditors, Congress intended to assert the federal lien. * * *

Thus the District Court correctly held that the federal tax lien was entitled to the balance of the proceeds held by the trustee after the payment of the costs of administration and the payment of the mortgagee's claim which ranked prior to the federal tax lien under federal law.

II. The referee was correct in not abandoning the properties which were subject to both the mortgage and the federal tax liens

Section 67 (b) of the Bankruptcy Act, *supra,* recognizes the validity of statutory liens for taxes owing to the United States, and Section 67 (c) provides for priority of such liens; after the payment of the costs

of administration and of certain wages where personal property not in possession is involved. It is well settled that, in order to reduce the bankrupt estate's assets to cash as speedily as practicable for distribution to creditors, a bankruptcy court will, in the proper exercise of its jurisdiction, authorize a trustee to take property belonging to the bankrupt and to reduce the property to money. Sections 2, 47 and 70 of the Bankruptcy Act (11 U. S. C. 1952 ed., Secs. 11, 75 and 110). In so doing the bankruptcy court may authorize the trustee to sell the assets free of liens or charges and to transfer the lienholders' rights to the proceeds received from the sale. *Goggin* v. *California Labor Div.,* 336 U. S. 118, 131; 4 Collier on Bankruptcy (14th ed.), Sections 70.97 and 70.99; 6 Remington on Bankruptcy (Fifth ed.), Sections 2577, 2578, 2580, 2583 and 2587.

In the present case, the referee entered an order on April 27, 1955, which authorized the trustee in bankruptcy to sell certain properties free and clear of all liens, and provided that the liens be transferred to the proceeds of sale. (R. 3–6.) The properties were sold by the trustee at public auction on that day. On April 29, 1955, the referee issued an order confirming the sale. (R. 24.) There is nothing in the record to show that the trustee did not derive a fair price for the sale of these properties, or that appellant was prejudiced by the sale of these properties.

There is no merit to appellant's contention (Br. 16–17) that the trustee acted improperly in failing to abandon the assets subject to appellant's mortgage, or that the referee should have ordered the trustee to

abandon the property. A court of bankruptcy may abandon only property that is burdensome, or charged with liens in excess of the value, or otherwise unprofitable to the bankrupt estate. Even then, the question as to whether the court shall elect to take burdensome property or to abandon it is solely a matter of discretion. 2 Remington on Bankruptcy (1956 ed.), Sections 1142–1143.

In the present case there is not only no showing that the assets subject to appellant's claim were burdensome, but to the contrary, as appellant admits (Br. 16), the record clearly shows that these assets were sold for more than the principal of the mortgagee's claim plus accrued interest thereon to the date of bankruptcy. (R. 24, 25.) In such circumstances the action of the District Court was not only justified but was required. The United States held a lien thereon for taxes; and it was entitled to priority of payment in any excess over the mortgagee's claim plus costs of sale and administration.

Additionally, the record does not reveal that appellant made any request that the properties in question be abandoned, or that it contended at any time that the trustee's failure to abandon the property was error. Furthermore, the record reveals that appellant was present at the hearing on the trustee's petition for an order authorizing sale of the assets (R. 3); and that there is no indication in the record that appellant ever opposed the sale. The record also reveals that appellant did not seek review by the District Court of the referee's order authorizing the trustee to sell the property or of its order confirming the sale.

(R. 32–35.) Consequently, under Sections 24 and 39c of the Bankruptcy Act (11 U. S. C. 1952 ed., Secs. 47 and 67 (c)), appellant having failed to seek review of the referee's orders, these orders became final, and appellant cannot later attack them collaterally on appeal for the first time. *Sampsell* v. *Imperial Paper Corp.,* 313 U. S. 215, 218–219; *In re Sterling,* 125 F. 2d 104 (C. A. 9th); *Seemann* v. *Nat. Bank of Commerce of Houston,* 112 F. 2d 378 (C. A. 5th); *In re Kedzie Block Corp.,* 135 F. 2d 952, 955 (C. A. 7th); *Doyle* v. *Ponsford,* 136 F. 2d 401 (C. A. 8th); *In re San Francisco Bay Exposition,* 50 F. Supp. 344 (N. D. Cal.). Under these circumstances appellant should not be permitted to complain for the first time on appeal that the referee's order for payment is inequitable in failing to order the trustee to abandon the assets subject to appellant's claim, or by confirming the sale of the assets.

III. The referee and the District Court correctly held that appellant was not entitled to interest upon its claim after the filing of the petition in bankruptcy

The general rule in bankruptcy is well settled that interest on unsecured as well as on secured claims provable in bankruptcy runs only to the date of the petition in bankruptcy. This general rule rests upon the theory that the affairs of the bankrupt are supposed to be wound up as of the date of bankruptcy, that the delay in payment of interest is not the act of the debtor but is an act of law for the mutual benefit of the creditors, and that it would be inequitable to permit the payment of interest to certain creditors which would increase the proportion of the assets

to which these creditors are entitled at the expense of the other creditors while the estate is in the process of administration. *Sexton* v. *Dreyfus,* 219 U. S. 339, 344; *New York* v. *Saper,* 336 U. S. 328; *Vanston Committee v. Green,* 329 U. S. 156;[2] 3 Collier on Bankruptcy (14th ed.), Section 63.16; 6 Remington on Bankruptcy (Sixth ed.), Sections 2827 and 2869. There are, however, two recognized exceptions to this rule. The first allows interest to the date of payment of the claim where the alleged bankrupt proves to be solvent. *New York* v. *Saper, supra,* p. 330. The second exception permits the payment of post-petition interest on a secured claim to the extent that the security subject to such claim produces income during the bankruptcy administration. *Vanston Committee* v. *Green, supra,* p. 164; *Sexton* v. *Dreyfus, supra,* p. 346; *New York* v. *Saper, supra,* p. 330.

Appellant urges a third exception to the general rule—one which some Courts of Appeals have recognized—that where the value of the security is more than sufficient to pay the principal of the secured claim, the excess should be applied to post-petition interest on the secured obligation. This alleged exception apparently rests upon the theory that the collateral is security for the payment of the interest as well as for the payment of the principal, and that it is

[2] Cf. *United States* v. *General Engineering & Mfg. Co.*, 188 F. 2d 80 (C. A. 8th), affirmed *per curiam*, 342 U. S. 912; *United States* v. *Edens*, 189 F. 2d 876 (C. A. 4th), affirmed *per curiam*, 342 U. S. 912; *Pavone Textile Corp.* v. *Bloom*, 302 N. Y. 206, 97 N. E. 2d 755, affirmed *per curiam, sub nom. United States* v. *Bloom*, 342 U. S. 912, for proceedings in reorganization, by way of arrangement and for general assignment.

not inequitable to pay interest to a secured creditor where there is a surplus of security available for the payment of such interest.[3]

In *Vanston Committee* v. *Green, supra,* the Supreme Court, in holding that first mortgage bondholders were not entitled to interest on interest accruing after the commencement of an equity receivership, stated (p. 165) "that the touchstone of each decision on allowance of interest in bankruptcy, receivership and reorganization has been a balance of equities between creditor and creditor or between creditors and the debtor."

Previously, in *United States* v. *Sampsell,* 153 F. 2d 731, this Court held that, where the security was sufficient to pay the principal of a mortgagee's claim, interest was payable to the date of payment of the principal. Following *Vanston* this Court, citing *Vanston,* denied post-petition interest to a secured creditor

[3] Some of the decisions which have permitted post-petition interest to the date of payment, where the value of the security is more than sufficient to pay both principal and interest, are as follows: *Kagan* v. *Industrial Washing Machine Corp.*, 182 F. 2d 139, 146 (C. A. 1st); *Littleton* v. *Kincaid*, 179 F. 2d 848 (C. A. 4th), certiorari denied, 340 U. S. 809; *Oppenheimer* v. *Oldham*, 178 F. 2d 386, 389 (C. A. 5th); *In re Macomb Trailer Coach*, 200 F. 2d 611 (C. A. 6th), certiorari denied, *sub nom. McInnis, Trustee* v. *Weeks*, 345 U. S. 958; *In re Inland Gas Corp.* (C. A. 6th), decided February 14, 1957 (1957 P-H., par. 72,479); *United States Trust Co. of New York* v. *Zelle*, 191 F. 2d 822 (C. A. 8th).

On the other hand, the payment of such interest was denied in *Sword Line* v. *Industrial Commissioner of State of N. Y.*, 212 F. 2d 865 (C. A. 2d), certiorari denied, *sub nom. Industrial Commissioner of New York* v. *Sword Line*, 348 U. S. 830, and *National Foundry Co. of N. Y.* v. *Director*, 229 F. 2d 149 (C. A. 2d). See *In re Riddlesburg Mining Co.*, 224 F. 2d 834 (C. A. 3d).

in *Pacific States Corp.* v. *Hall,* 166 F. 2d 668, upon the ground that from the record this Court could not determine (p. 672) "the value of the security and the relative equities between the secured creditor and the subordinate creditors * * *."

More recently, in *Beecher* v. *Leavenworth State Bank,* 192 F. 2d 10, this Court denied post-petition interest to a mortgagee and to a county which held a lien upon specific property of the bankrupt estate for unpaid taxes and assessments. In *Beecher,* this Court pointed out (p. 14) that, except where the bankrupt estate turns out to be fully solvent, or the securities yield income, the only time when interest after bankruptcy on secured claims is allowed is where the courts have discovered equitable reasons for doing so, citing *Vanston Committee* v. *Green, supra.* As petitioners there had not presented any equitable reason for a departure from general principles, the allowance of interest on the secured claims was allowed after bankruptcy only to the extent that interest was paid from the income of securities pledged as collateral, or to the extent that the bankrupt estate was fully solvent. This Court also stated (p. 14, fn. 4) that its decision in *United States* v. *Sampsell, supra,* allowing post-petition interest on a secured claim "was necessarily overruled by the Supreme Court in the Vanston case which followed the Sampsell case."

Beecher, we submit, is controlling here; hence appellant is not entitled to post-petition interest. In *Beecher,* as in the present case, there were conflicting claims of several secured creditors. In the present

case the security did not produce income; and the amount realized from the sale of the assets in the bankrupt estate was not sufficient to cover the principal of the liens thereon. Hence, payment to appellant of post-petition interest would reduce the amount of principal which the United States would recover on its tax liens. See also *In re Pollard Bros.*, 128 F. Supp. 818 (S. D. Cal.).

The question of post-petition interest to secured creditors is presently under consideration by this Court in *Palo Alto Mutual Savings and Loan Assn.* v. *Ralph E. Williams, Trustee in Bankruptcy of John E. Duskin,* No. 15,105, which is to be argued before this Court *en banc* on April 9, 1957. In *Palo Alto* the property subject to the lien was sold for a sum sufficient to pay the principal amount of first lienholder, together with interest thereon to date of payment, but for a sum insufficient to pay in full the principal of the second deeds of trust on the same property. The referee and the District Court there denied post-petition interest to the first lienholder, relying upon the decision of this Court in *Beecher.*

CONCLUSION

For the reasons stated, the order of the District Court affirming the order of the referee should be affirmed by this Court.

Respectfully submitted.

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